

## REMARKS

This is a response to the final Office Action (Paper No. 5) of June 19, 2002. Upon entry of this response, claims 1-22 are pending in the application. The Applicants respectfully request that there be reconsideration of the claims in light of the following remarks.

The Office Action rejected claims 1-22 under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 5,828,886, to *Hayashi*. For the reasons set forth herein, Applicants respectfully request reconsideration and withdrawal of these rejections.

### Rejections Under 35 U.S.C. §102(a)

The Office Action rejected claims 1-16 under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 5,828,886, to *Hayashi*. For the reasons set forth below, Applicants respectfully traverse this rejection.

#### Independent Claims 1, 6, 11 and 17

With regard to rejected independent claims 1, 6, 11 and 17, Applicants respectfully traverse the Office Action assertion that *Hayashi* anticipates the same structures and methods as claimed. The Office Action alleges that *Hayashi* anticipates the register indicator system of claims 1, 6, 11 and 17. However, Applicants respectfully disagree and submit that *Hayashi* neither teaches nor discloses each and every element of the claimed invention, and, hence, *Hayashi* does not anticipate Applicants invention.

In particular, Applicants respectfully assert that that *Hayashi* does not teach or suggest “a code usage register contained within a NOP instruction”, as claimed in independent claims 1, 6, 11 and 17. While *Hayashi* does disclose a register allotting process and instruction scheduling process, Applicant contends that *Hayashi* does not use any portion of the NOP

instruction to store or carry register information. As evidenced by every example and the entirety of *Hayashi's* disclosure, the system of *Hayashi's* never uses the NOP instruction to hold a code usage register. For example, the table (col. 15, line 57 through col. 16, line 24) shows twelve NOP instructions. However, Applicant respectfully asserts that none of the twelve NOP instructions are associated with any register information.

Similarly, the table (col. 18 line 46 through col. 19, line 8) shows four NOP instructions, which are all devoid of register information. In similar fashion, Applicant respectfully submits that every NOP instruction in every one of *Hayashi's* examples (i.e., the tables in col. 21, line 51-col. 22, line 25; col. 22, line 35 - col. 23, line 15; col. 23, lines 25-63; col. 24, lines 17-49; and col. 24, line 65 - col. 25, line 37) is devoid of register information. Applicants respectfully maintain that *Hayashi*, therefore, does not teach "a code usage register contained within a NOP instruction" as claimed. It is well settled that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock Inc.*, 721 F.2d 1540 (Fed. Cir. 1983).

In fact, Applicant contends that *Hayashi* actually teaches away from the claimed invention by teaching that the register information is actually stored within the register information management table (Fig. 1, item 30) in the compiler (Fig. 1, item 12), and not "within a NOP instruction", as claimed. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. ... in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 2 F.3d 551, 31 U.S.P.Q.2d 1130, 1131 (Fed Cir. 1994).

Thus, Applicants respectfully submit that claims 1, 6, and 11 embody an invention that is patentably distinct from the invention of *Hayashi*.

These aspects of the present invention, as recited in claims 1, 6, 11 and 17, clearly are neither taught nor suggested by the prior art of record. Therefore, the prior art of record does not suggest or otherwise render obvious all the elements of the claimed invention as required by "*In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)". Therefore, any rejection to render claims 1, 8, 10 and 17 obvious is inadequate and therefore should be withdrawn.

Should the Examiner reject claims 1, 6, 11 and 17 under 35 U.S.C. §103, Applicants request that the Examiner point out with particularity where the elements of the present invention are disclosed or suggested, along with pointing out with particularity where there is a teaching in the reference to modify the reference to derive the present invention.

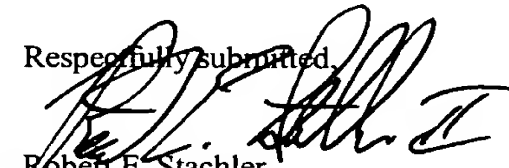
*Dependent Claims 2-5, 7-10, 12-16 and 18-22*

Claims 2-5, 7-10, 12-16 and 18-22 are dependent upon claims 1, 6, 11 and 17 which are believed to be allowable over the prior art made of record. Therefore, these claims are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

**CONCLUSION**

Applicants respectfully submit that claims 1-22 are now in proper condition for allowance, and respectfully request that the Examiner advance this case to issuance. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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